IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 16501 of 2005(M)

PETITIONER:

D. PODIYAN S/O. DANIEL,
AGED 67 YEARS, DRIVER (RETIRED), KERALA STATE ROAD TRANSPORT CORPORATION, ADOOR AND RESIDING AT MINI MANDIRAM, THUVAYOOR SOUTH P.O., KADAMBANAD, PATHANAMTHITTA.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:
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1. **THE KERALA STATE ROAD TRANSPORT CORPORATION, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGING DIRECTOR.**

2. **THE DISTRICT TRANSPORT OFFICER, KERALA STATE ROAD TRANSPORT CORPORATION, ADOOR.**

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 **TRUE COPY OF MEMORANDUM NO. PLA3-065296/71 DTD. 20-12-71**

EXT.P2 **TRUE COPY OF ORDER NO.R.DIS.PL85/(9)043264/93 DTD. 13-3-96**

EXT.P3 **TRUE COPY OF REPRESENTATION DTD. 7-5-05**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No.16501 OF 2005

Dated this the 7th day of June, 2007

JUDGMENT

Petitioner has approached this court seeking a declaration that leave without allowance period upto the amendment of Kerala Service Rules in 1984 is liable to be counted for pension and pensionary benefits. He further seeks a declaration that the respondent is liable to grant and release the pension and pensionary benefits to the petitioner taking into account the leave without allowance period upto 1984 also without any further loss of time. He seeks a direction to sanction and pay pension with arrears and pensionary benefits with accrued interest thereon.

Case of the petitioner in brief is as follows:

Petitioner joined service of the Corporation on 20-12-1971 pursuant to the advice by the Public Service Commission. While working so, he was sanctioned Leave without allowance for going

abroad on 13/06/1977. His leave was extended for another five years from 13/08/1987. Invasion of Kuwait by Iraq brought the petitioner back to Kerala. He was allowed to join duty. He joined duty in the first week of September 1990 and he retired from service on attaining the age of superannuation with effect from 30-11-1993. Ext.P2 is the order according sanction for payment of DCRG and service gratuity. It is stated that excluding the leave period the petitioner had put eight years, 11 months and 10 days. Petitioner filed Ext.P3 representation.

2. Counter affidavit is filed by the Corporation, therein it is interalia stated as follows:

> " The request for counting the LWA availed by the petitioner prior to 1984 for pension cannot be considered, as the Rules do not permit so. Regarding the reference made to G.P.(P) 274/70/fin. dated 29/04/1970 and benefits claimed accordingly, it is submitted that the said G.O. does not entitle the petitioner for counting the LWA period for pension. The Government Order lays guide

> lines for sanctioning LWA as per rule 69 Part I KSR whereby it is specifically stated as per Sub Clause iii(a) that LWA if any granted will not be counted for pension.

It is the case of the respondent that as the minimum period required for statutory pension is 10 years, petitioner is not eligible for pension.

3. In the reply affidavit, petitioner has interalia stated as follows:

> " It is patently clear that the deponent intentionally or unintentionally misquoted the provisions. He has referrred to Rule 69 Part I K.S.R. It is totally irrelevant in the case, Rule 69, Part I, K.S.R. is re-produced below:-
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> > " 69. An officer on leave may not take any service or accept any employment without obtaining the previous sanction of the authority empowered to fill up the post held by him.

Note; This rule does not apply to casual literacy work, or to service as an examiner or similar employment; nor does it apply to acceptance of foreign service, which is governed by the rules under Chapter-XI"

4. Learned counsel for the petitioner relies on Rule 57 in this regard. Petitioner relies on the decision of this court reported in **KSRTC V. Noorudhinkutty** (2005(3)KLT 504) to contend that the period the petitioner was on leave without allowance prior to the amendment is liable to the counted.

5. I feel that it is a case where a decision should be taken by the respondent taking note of the judgment of this court in 2005(3)KLT 504 also. Petitioner has a claim in the alternative that the petitioner has the service of 9 years and 3 days and going by Rule 57 that is sufficient for granting pension tot he petitioner

In such circumstances, the writ petition is disposed of as follows:

There will be a direction to the first respondent to consider and take a decision on Ext.P3 after hearing the petitioner also and taking note of the judgment of this court in 2005(3)KLT 504. It is open to the petitioner to make any further written submissions within a period of three weeks from today, in which event, when Ext.P3 is considered, the said statement also will be taken note of by the first respondent. If the petitioner takes the contention that petitioner has 9 years and 3 days excluding the period of leave and that is sufficient under Rule 57 to grant him pension, the first respondent will consider that contention also. A decision will be taken within ten weeks from the date of receipt of a copy of this judgment.

K.M.JOSEPH
JUDGE

sv.